

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 617 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NILESH TODI

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR HJ NANAVATI for Petitioner

MR NV ANJARIA for Respondent No. 1

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE D.P.BUCH

Date of decision: 29/12/1999

ORAL JUDGEMENT

Per Thakker, Actg.C.J.

This petition is filed as a public interest litigation for prayers in terms of para 3 which reads as under:-

"3. On the grounds stated hereinabove, and those that may be urged at the time of hearing of this petition, Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order directing the respondent to-

(A) allow this petition.

(B) declare that the respondent Board being instrumentality of a 'State', all its commercial transactions are required to be free from arbitrariness, unfairness and should be in consonance with the basic principles of Article 14 of the Constitution of India.

(C) direct the respondent Board, their officers, servants and agents to award the work of supply of answer books, supplementary books, question papers, preparation of mark sheets and/or other commercial transactions by resorting to a method which is open, transparent, fair and reasonable and in consonance with the principles laid down under Article 14 of the Constitution of India.

(D) any such other and further relief/s as deemed just and proper, looking to the facts and circumstances of the case, in the interest of justice."

The case of the petitioner is that he is a businessmen carrying on activities in design, printing and development of packaging materials. It is his case that the respondent Board which is an instrumentality of 'State' within the meaning of Article 12 of the Constitution of India is required to arrange, control and supervise examination to be taken by the Board of students of secondary schools in the State. For that, the Board has to arrange for preparation and supply of answer books, supplementaries and other materials. According to the petitioner, students appearing in such examination are large in number and about 300 tons of papers are normally used by the Board for answer books and supplementaries. According to the petitioner, for

awarding contract of answer books and supplementaries , there must be a policy which should be reasonable and in consonance with provisions of the Constitution. It is the allegation of the petitioner that the Board has taken an arbitrary action which requires to be interfered with by this Court.

Notice was issued pursuant to which the respondent has appeared and an affidavit in reply is also filed on behalf of the Board by Chairman of the Gujarat Secondary Education Board. In the affidavit, it is stated that all the decisions of the board in respect of matters of award of contract are free from arbitrariness and unfairness and are also in consonance with Article 14 of the Constitution of India. Decisions, as per assertion of the deponent, are taken after due deliberations. It is also stated that the Finance Committee of the Board is entrusted with the work of awarding of contracts. The Finance Committee consists of the following members:

- "1.Chairman
2. Vice Chairman
3. Officer on Special Duty
4. Secretary of the Board
5. Controller of Accounts and Stores.
6. Shri Kanchanlal M.Patel (Member)
7. Shri Rajendra C. Patel (Member)
8. Shri Ramanlal S. Patel (Member)
9. Dr. Vansia Sukhdevsinh (Member)
- 10.Commissioner of Higher Education
- 11.Secretary Education Department, Govt.of Gujarat.

It is stated that with the experience gained, the Board has evolved a policy of awarding contracts with the utmost object of maintaining secrecy. It is also stated that the contract is awarded on the basis of stationery which is needed by the Board. In para 7, it was stated as under :

- "7. I submit that printing of question pauperism result processing and lamination of mark sheets are secretive process, hence powers of printing question papers etc. are traditionally vested to the chairman of the board.

I submit that contract as regards printing of question papers is not awarded to one press as such. The chairman of the board offers the

contract to more than one printing press and he may have to go on even rotating and the names of the presses are not disclosed to any one. I submit that for result processing, the Chairman of the Board is authorised to requisition the services of computer agency. I submit that there have been in the past cases of duplication of mark sheets, leakage of question papers and availability of blank answer books with candidates appearing at the examination. This is to be avoided."

For the year 1997-98, there was exception so far as the above policy is concerned because of peculiar facts and circumstances. It was stated that contract was awarded to one Confisec Printers, but there was failure on the part of the said contractor in supplying necessary materials and a petition was filed by the said Printers which was pending. Some interim order was also passed which is made part of the record by annexing it. It was in these circumstances that as a special measure, the contract was given to Crystal Forms Limited in "public interest" as forthcoming examinations were to ensue in near future.

Mr. Nanavati for the petitioner contended that the petitioner himself is not interested in the final outcome. He has also denied the allegation levelled against him in the affidavit in reply that since there was some litigation between the Board and Confsec Printers, at the instance of the latter, the petitioner has filed this petition. According to Mr. Nanavati, he was not interested and he is not interested in the litigation pending between the Board and Confsec Printers. As an enlightened citizen of India and as a person who is concerned with proper administration of the board, he has approached this Court.

It was also submitted that by this petition, he does not want any direction to be issued by this Court. He only wants that the policy to be adopted and followed by the board must be free from arbitrariness as it is an instrumentality of "State". He, therefore, submitted that this a fit case in which appropriate directions may be issued.

Mr. Shelat, learned Addl. Advocate General, on the other hand, submitted that the petitioner himself is a businessman and at his instance, a petition as pro bono

publico would not lie. For that, our attention was invited to a decision in Valjibhai Patel vs. S.N. Sundaram, 1995 (1) GLR 807. In that case, the Division Bench observed that ordinarily, a person must have "sufficient interest" so as to file a petition as pro bono publico. It may be that Court may take liberal view of the matter on "Locus standi". But the fact that there is good case on merits, does not ipso facto give locus standi. Two concepts, namely, "locus standi" and "merits of the matter" are independent of each other. It may happen that a person may have locus standi and yet, he may not have justiciable cause to get relief from the Court or vice versa. Referring to the decision of the Supreme Court, it was held by the Division Bench that in the facts and circumstances of the case, the petitioner of that petition had no locus standi and accordingly, the petition was dismissed.

In the instant case also, according to the Board, the petitioner has no locus standi. The petitioner is a businessman. True it is that he had not filled in the tender. An affidavit is also filed stating therein that he is not interested in contract. The fact, however, remains that he is in the business and he has challenged the action. Prima facie, therefore, we are of the view that it cannot be said that he has "sufficient interest" to file a petition as a pro bono publico.

We are, however, not disposing of the petition only that ground. Ordinarily, when attention of the Court is drawn by any person to any illegality, the Court may, if it thinks fit, consider the facts and circumstances of the case whether to issue appropriate directions to the authority concerned. In the instant case, however, we are satisfied even on merits that the policy which has been adopted and followed by the Board cannot be said to be arbitrary, irrational or unreasonable so as to fall within the mischief of Article 14 or 19 of the Constitution of India. In fact, in the Board, responsible officers are included. The authority is given to the Board which takes collective decision and such decisions are implemented. In 1997-98, because of special and peculiar circumstances and with a view to meet abnormal situation of ensuing examination, the action was taken which cannot be said to be arbitrary or unreasonable.

For the foregoing reasons, we see no ground to issue any directions to the Board. There is no substance in the petition. It deserves to be dismissed and is accordingly

dismissed. Notice discharged. No costs.

parekh